

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

US EPA RECORDS CENTER REGION 5



423972

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 89 C 5915
)	
v.)	Judge James B. Zagel
)	
LOUIS WOLF, a/k/a GUSTAV)	
SIERAWSKI, d/b/a ILLINOIS)	
DEVELOPMENT CORPORATION,)	
COMMERCIAL MANAGEMENT)	
COMPANY, CMC MANAGEMENT,)	
)	
Defendant.)	

DECLARATION OF JANET PFUNDHELLER

I, Janet Pfundheller, depose and state as follows:

1. I am an employee of the Region V office of the United States Environmental Protection Agency (EPA). My job title is Waste Management Division Records Manager, a position I have had since January 1, 1991.

2. I am the custodian of certain records maintained by the EPA in the normal course of business. Specifically, I am the custodian of records relating to "removal actions" conducted by the EPA under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR § 300.165), and the records cited below are part of the EPA's official record for the A-Chemical matter.

3. Records relating to the A-Chemical Corporation matter are among the records for which I am the custodian. In particular, I have examined the following record from the

A-Chemical Corporation files:

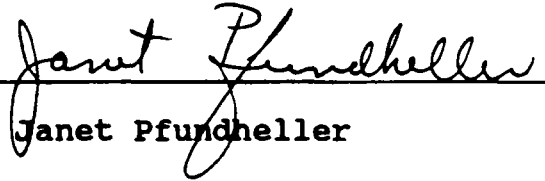
A February 13, 1987, memorandum entitled:

Six-Month Time Exemption to Allow the Continuation of
Removal Activities at the A-Chemical Company, Chicago,
Illinois - ACTION MEMORANDUM

A copy of this record is attached to this Declaration, and is a
true and accurate copy of the record maintained in the files for
which I am the custodian.

I declare under penalty of perjury and upon personal
knowledge that the contents of the foregoing Declaration are
true.

Executed this 28 day of July, 1992, at Chicago,
Illinois.



Janet Pfundheller

PFUND.DEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

FEB 13 1987

DATE:

SUBJECT: Six-Month Time Exemption to Allow the Continuation of
Removal Activities at the A-Chemical Company,
Chicago, Illinois - ACTION MEMORANDUM

FROM: Stephen M. Browning, On-Scene Coordinator
Western Response Unit *Michael Strumbe for*

TO: Valdas V. Adamkus
Regional Administrator

THRU: Basil G. Constantelos, Director
Waste Management Division *BGC*

ISSUE

Continued response actions of a duration greater than 6 months cannot be undertaken unless an exemption to Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is granted. The initial response action at the A-Chemical Company site in Chicago, Illinois, took place in January 1986, which was before the Superfund Amendments and Reauthorization Act of 1986 (SARA) was adopted. The 6-month time limit expired in July 1986.

STATUTORY CRITERIA

Section 104(c) of CERCLA limits Federal emergency response to 6 months in duration unless three criteria are met: (1) continued response actions are immediately required to mitigate an emergency; (2) there is an immediate risk to public health and the environment; and (3) such assistance will not otherwise be provided on a timely basis.

DISCUSSION

The United States Environmental Protection Agency (U.S. EPA) initiated emergency action on January 26, 1986, to stabilize a fire-damaged chemical blending facility. Written confirmation of verbal authorization was received in an immediate removal action memorandum dated February 28, 1986. The initial response was completed on February 1, 1986. In early June of 1986, the U.S. EPA was apprised by both neighbors and the Hazardous Materials Team from the Chicago Fire Department that a second fire had occurred at the A-Chemical site. In response to this information the U.S. EPA visited the site and confirmed that emergency conditions existed which posed immediate threats to the public health. Funds obligated but unused from the initial response were expended; a ceiling increase changing the project's authorized budget from \$19,000 to \$190,000 was approved by

the Regional Administrator on June 25, 1986. An additional ceiling request raising the project ceiling to \$210,000 was approved on August 22, 1986. Approximately \$150,000 of the \$162,000 extramural budget was expended to cover the following:

1. 24-hour-per-day site security;
2. Transportation and disposal of liquid and solid hazardous waste;
3. Removal of chromium contaminated frozen water from adjacent streets, sidewalks, and alleys;
4. On-site decontamination of debris contaminated as a result of these fires;
5. Disposal of decontaminated site debris;
6. Laboratory analyses for nearly 100 drums of hazardous wastes.

Post facto, we have learned that we cannot consider the initial and secondary actions at the A-Chemical site as two separate actions. Instead, these actions must be considered as a single action. As a result, authorization for the response initiated on January 26, 1986, legally expired on July 25, 1986. However, removal actions at A-Chemical did not cease until mid-August of 1986, when the U.S. EPA officially released the site to the City of Chicago's Department of Inspectional Services for a subsequent demolition.

The manner in which this site met the prescribed criteria for a 6-month time exemption are as follows:

- (1) There was an immediate risk to public health remaining as of July 25, 1986. This risk was predicated upon discontinuation of response actions including continuous site security such that due to socio-economic differences among the community at large, there was a very high probability of unauthorized access, vandalism, and theft. In fact, the U.S. EPA had every reason to expect that someone would enter this site and even attempt to remove some of the drums containing hazardous waste. This expectation was based upon observations and prior history.
- (2) Continued response actions were immediately required to mitigate an emergency. While I cannot emphatically state that an emergency state existed, in lieu of item one above, the U.S. EPA could not afford to cease site activities which included building decontamination and drum removal.
- (3) Had the U.S. EPA ceased removal actions at the A-Chemical site, neither the Illinois Environmental Protection Agency nor the City of Chicago's Environmental Affairs Department would have provided assistance in a timely manner.

RECOMMENDATION

Because conditions at this site meet the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 104(c) criteria, I recommend that you approve an exemption from the 6-month limit. This post facto exemption is necessary for the U.S. EPA to comply with CERCLA 104(c) due to the present interpretation that this was a continuation of a previous removal action as opposed to the initially presumed interpretation that these were two separate and distinct removal actions.

APPROVE:

Robert Springer
REGIONAL ADMINISTRATOR

DATE:

2-17-87

DISAPPROVE:

REGIONAL ADMINISTRATOR

DATE:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

July 28, 1992

MEMORANDUM

SUBJECT: Declaration for United States v. Wolf

FROM: Roger Grimes *Rmg*
Assistant Regional Counsel

TO: Jan Pfundheller
Records Manager

Please review the attached Declaration I have prepared for you, and if it is accurate, sign and return it to me. This is very similar to a Declaration you signed for this case earlier, attesting that the Agency had certain records in its files relating to the Wolf litigation. This Declaration will support an additional document which we need as part of our arguments for liability and cost recovery against Wolf.

Thanks for your attention to this. As always, call with any questions at 6-6595.